DRAFT

November ___, 2005

Federal Election Commission
Office of General Counsel
999 E. Street, NW
Washington, DC 20463

Re: Request for Advisory Opinion on State Reporting of Mixed Federal-State Expenditures

Dear Commissioners and General Counsel:

Please consider this letter as a request for an advisory opinion from the Federal Election Commission ("FEC") pursuant to FEC regulation 11 CFR 112.1. The California Fair Political Practices Commission ("FPPC") is the agency charged with interpretation and implementation of the Political Reform Act of 1974, as amended ("PRA"), which is the California counterpart of the Federal Election Campaign Act ("FECA").

On behalf of the FPPC, I seek an advisory opinion on whether the FECA would preempt a state regulation requiring California political party committees to report monies received into bank accounts used by these committees to fund a mix of federal and state or local election activities – the "allocation" and "Levin fund" accounts permitted by the FECA. In addition, the anticipated regulation would require the disclosure of expenditures from such accounts made to support state or local campaigns, using allocation formulas that may differ from corresponding formulas established by the FECA for federal reports. The FPPC believes that federal law in this area was not intended to impede full and accurate reporting of receipts and expenditures in state elections, but some political party committees do not agree.

In September 2004 the FPPC became aware of the need for clarification of the duties of political party committees reporting mixed federal and state or local campaign expenditures, when the treasurer of one such committee sought advice from the FPPC regarding an expenditure on an advertisement that contained recommendations on federal as well as non-federal candidates in an upcoming election. The FECA required that payment for this particular advertisement be made initially from the committee's federal account, but it permitted the federal account to be reimbursed by a non-federal account to reflect the portion of the

advertisement devoted to non-federal candidates.[1] However, the FECA permitted a maximum reimbursement of 64 percent of the total cost, while the treasurer found that the true benefit to state candidates and issues amounted to 80 percent of the total cost. Because the FECA prohibited reimbursement of the full value of the advertisement (to non-federal candidates, measured by the relative allocation of advertising space as permitted by state law), the treasurer concluded that the federal account had in effect subsidized portions of the advertisement that featured non-federal candidates and issues.

The FPPC issued an advice letter[2] to reconcile the FECA's reimbursement limitation with the PRA's general requirement that all state committee income and disbursements be reported, by advising the treasurer to treat the federal "subsidy" as a contribution from the federal to the state committee, in the amount of 16 percent of the cost of the advertisement. As required by the PRA, the contribution would be allocated among contributors to the federal committee, the individual contributions being reported with the committee itself identified as an intermediary.

The problem highlighted in this advice letter is a recurrent one. To safeguard a federal interest in limiting the influx of non-federal funds into federal election campaigns, federal law governing mixed federal and state campaign spending establishes presumptions that expenditures attributable to federal election activities will *not* be less than a certain percentage of the whole. Indeed, the FECA often permits the entirety of such expenditures to be paid from federal funds. California's interest in the full and accurate disclosure of expenditures in state and local elections is not inconsistent with the federal interest, but California's interest is served by different means, requiring that mixed federal and state expenditures accurately allocate value received by state and local candidates, without the use of fixed minimum or maximum percentages.

The FPPC is considering a regulation that would essentially codify the approach taken in the *Bolling* advice letter, and had begun that process when members of the regulated community expressed concern over federal preemption. The FPPC believes that a state regulation may require that a political party committee report mixed state and federal spending in a manner that differs in detail from reports submitted to the FEC, so long as the state reporting requirement has no effect on the rights or responsibilities of the committee under federal law. However, some members of the regulated community have argued that a state rule may not require committees to allocate and report mixed federal and non-federal expenditures in a manner that is "inconsistent" with federal reporting rules, insofar as the state reports call for information generated by different allocation formulas. Your opinion on this point would be greatly appreciated.

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[1] The committee in question maintained three bank accounts, registered as "committees" in their own right, as required by federal and state law.

[2] A copy of the *Bolling* Advice Letter, No. A-04-212, is enclosed for your information. FPPC advice letters are similar in form and function to FEC advisory opinions, but they are written by staff under supervision of the FPPC's General Counsel; they are not typically reviewed by the Chairman or Commissioners.

Very truly yours,

Liane Randolph
Chairman,
California Fair Political Practices Commission

Enclosure: *Boling* Advice Letter, No. A-04-212